



## LIBRARY OF CONGRESS

### Copyright Royalty Board

**[Docket No. 14-CRB-0007- CD (2010-12)**

***In re* Distribution of 2010, 2011, 2012 Cable Royalty Funds;**

**Docket No. 14-CRB-0008-SD (2010-12)**

***In re* Distribution of 2010, 2011, 2012 Satellite Royalty Funds]**

**AGENCY:** Copyright Royalty Board, Library of Congress.

**ACTION:** Notice announcing commencement of distribution proceedings with request for Petitions to Participate.

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**SUMMARY:** The Copyright Royalty Judges (Judges) announce the commencement of proceedings to determine distribution of 2010, 2011, and 2012 royalties deposited with the Copyright Office under the cable service statutory license and the satellite carrier statutory license. The Judges also set the date by which all parties wishing to participate and share in the distribution of cable or satellite retransmission royalties for 2010 through 2012, inclusive, must file a Petition to Participate and pay the accompanying \$150 filing fee. The Judges seek a single Petition to Participate in either or both Phase I and Phase II of the cable royalty proceeding and a separate Petition to Participate in either or both Phase I and Phase II of the satellite royalty proceeding. Any party that fails to file a Petition to Participate by the time set forth in this notice shall not be a participant at any stage of either proceeding.

**DATES:** Petitions to Participate and the filing fee are due on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**].

**ADDRESSES:** This notice and request is also posted on the agency's website

([www.loc.gov/crb](http://www.loc.gov/crb)) and on Regulations.gov ([www.regulations.gov](http://www.regulations.gov)). Parties who plan to

participate should see How to Submit Petitions to Participate in the Supplementary Information section below for physical addresses and further instructions.

**FOR FURTHER INFORMATION CONTACT:** Kimberly N. Whittle, CRB Attorney Advisor, by telephone at 202-707-7658; LaKeshia Keys, CRB Program Specialist, by telephone at (202) 707-7658; or by e-mail at [crb@loc.gov](mailto:crb@loc.gov).

**SUPPLEMENTARY INFORMATION:**

**Background**

Twice each year, cable services and satellite carriers deposit with the Copyright Office royalties payable for the privilege of retransmitting over-the-air television and radio broadcast signals via cable and satellite. 17 U.S.C. 111, 119. The Copyright Royalty Judges (Judges) oversee distribution of the royalties to copyright owners whose works are included in the retransmissions and who have filed a timely claim for royalties. Pursuant to 17 U.S.C. 803(b)(1), the Judges hereby give notice of the commencement of proceedings for distribution of cable and satellite royalties deposited for broadcasts retransmitted in 2010 through 2012 and call for interested parties to file Petitions to Participate.

Any party wishing to receive royalties payable for 2010 through 2012 must file a Petition to Participate in each proceeding no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE **FEDERAL REGISTER**]. If an interested party fails to file a Petition to Participate in response to this notice, that party will not be eligible for distribution of royalties for 2010 through 2012 from either the cable or the satellite fund. The Judges will resolve all issues relating to distribution of cable and satellite royalty funds for 2010 through 2012 in these proceedings, Docket No. 14-CRB-

0007-CD (2010-12) and Docket No. 14-CRB-0008-SD (2010-12). *See* 37 CFR 351.1(b)(2).

### **Commencement of Distribution Proceedings**

The Judges have determined that controversies exist with regard to distribution of the cable and satellite retransmission royalties that licensees deposited for 2010, 2011, and 2012. Therefore, pursuant to Section 804(b)(8) of the Copyright Act, the Judges are causing this notice to be published in the *Federal Register* to announce the commencement of Phase I cable and satellite distribution proceedings for the years 2010, 2011, and 2012.

The Judges base their conclusion regarding 2010-11 cable funds controversies upon information provided by certain interested parties in their joint Motion to Initiate Proceedings. *See* Motion to Initiate a Phase I Proceeding for the Distribution of the 2010 and 2011 Cable Royalty Funds, Docket Nos. 2012-4 CRB CD 2010 and 2012-9 CRB CD 2011 (January 18, 2013). Specifically, groups of claimants to the royalty funds, acting together and represented by joint counsel, have made an effort to negotiate a distribution scheme agreeable to all claimants. Unable to reach an agreement, the claimants notified the Judges of the existence of controversies and stated their belief that “a hearing will be necessary to resolve this controversy.” *Id.* at 2.

The Judges base their conclusion regarding 2010-11 satellite funds controversies upon comments from parties. *See, e.g., Comments of Phase I Parties*, Docket No. 2012-5 CRB SD 2010 (September 5, 2012) (responding to Notice Requesting Comments regarding partial distribution, 77 Fed. Reg. 46526 (August 3, 2012)); *Comments of Phase I Parties*, Docket No. 2012-9 CRB SD 2011 (February 21, 2013) (responding to Notice

Requesting Comments regarding partial distribution, 78 Fed. Reg. 4168 (January 18, 2013).

The Judges base their conclusion regarding 2012 cable and satellite royalty funds controversies upon the parties' motions for partial distribution and comments from parties regarding controversies.<sup>1</sup> *See*, in Docket Nos. 14-CR-0007-CD (2010-12) and 14-CR-0008 SD (2010-12), *Motion of Phase I Claimants for Partial Distribution* (July 25, 2014) and *Comments of Phase I Parties* (October 2014), (responding to *Notice requesting comments*, 79 Fed. Reg. 59306 (October 1, 2014) ) (including comments from the parties to the July 25 motions reiterating the existence of their claims to the 2012 cable and satellite funds and of controversies potentially in need of adjudication).

In the present proceedings, groups of claimants have identified themselves as arranged into program categories: Program Suppliers, Joint Sports Claimants, Public Television Claimants/Public Broadcasting Service, Commercial Television Claimants/National Association of Broadcasters, Devotional Claimants, Canadian Claimants, American Society of Composers, Authors and Publishers (ASCAP), Broadcast Music, Inc. (BMI), SESAC, Inc., and National Public Radio. The Judges recognize that other claimants might not be represented by joint counsel for the groups of claimants that seek to initiate this proceeding. The Judges, therefore, provide this public notice to alert anyone who claims an interest in cable or satellite retransmission royalties deposited for royalty years 2010 through 2012, inclusive.

In order to share in the royalties at issue, any claimant not joined in one of the groups identified above must file a Petition to Participate, individually or jointly with

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<sup>1</sup> The Judges have the issue of partial distribution under advisement and will issue a separate order.

other claimants. If, at a later point in the proceedings, a claimant chooses to join a group participating through joint counsel, that claimant may withdraw its individual Petition to Participate. The prerequisites to participation in a distribution proceeding are (1) the filing (individually or jointly) of a valid claim for each royalty year at issue and (2) the filing (individually or jointly) of a valid Petition to Participate.

Only attorneys who are members in good standing of the bar of one or more states may represent parties before the Judges. All corporate parties must appear through counsel. Only if the petitioning party is an individual, may he or she represent himself or herself without legal counsel. 37 CFR 350.2.

The Judges previously assigned separate docket numbers to the cable and satellite distribution proceedings for the period 2010 through 2012. Upon receipt of all Petitions to Participate, the Judges anticipate consolidating all cable proceedings for the years 2010 through 2012 under the captioned docket number 14-CRB-0007-CD (2010-12) and all satellite proceedings for the years 2010 through 2012 under the captioned docket number 14-CRB-0008-SD (2010-12).

### **Petitions to Participate**

Parties filing Petitions to Participate must comply with the requirements of section 351.1(b) of the Copyright Royalty Board's regulations. In addition, each Petition to Participate must set forth for each claim year, the name of each claimant, the corresponding claim number, an indication of whether the claim is an individual or joint claim, and the program category into which the claim may fall. Each Petition to Participate shall be accompanied by a Microsoft Excel spreadsheet in electronic form consisting of the following columns: Claimant; Claim Year; Claim Number; Claim Type;

Phase I Category. For “Claim Type,” participants shall enter “I” for an individual claimant, “J” for a joint claimant, and “W” for a claimant listed within a joint claim. The information in the column for “Claim Category” shall be coded 1 for syndicated programming and movies, 2 for live college and professional team sports, 3 for programs produced by local commercial television stations, 4 for public broadcasting, 5 for programs of a religious or devotional character, 6 for Canadian programs retransmitted within the United States, 7 for musical works carried on broadcast television signals, and 8 for National Public Radio (all non-music content broadcast on NPR stations). Claimants’ characterization of their claims at this juncture is for ease of administration only and is not dispositive of the ultimate disposition of any claim or the final composition of any Phase I claimant category.

Petitioners who seek to categorize any claim in a category not listed in the previous paragraph shall assign a number (starting with 9) to each new category, and shall include a brief description of each new proposed category. Claimants, or claimant representatives, that have filed claims in multiple years shall list the claims in separate rows for each year. Claimants, or claimant representatives, that will seek royalties in multiple claim categories shall list each claim in a separate row for each separate claim category. Similarly, claimants, or claimant representatives, that assert multiple claims in a given claim year shall list each claim and claim number in a separate row. Petitioners are responsible for making a sufficient showing of a “significant interest” in the royalty funds at issue.

Claimants whose claims do not exceed \$1,000 in value and who include a statement in their Petitions to Participate that they will not seek distribution of more than

\$1,000 may file the Petition to Participate without payment of the filing fee. The Judges will reject any Petition to Participate that is not accompanied by either the statement of limitation described in the preceding sentence or the \$150 filing fee. The Judges will not accept cash payment. Parties must pay the filing fee with a check or money order payable to the “Copyright Royalty Board.” The Judges will dismiss any Petition to Participate that is accompanied by a check returned for lack of sufficient funds.

### **How to Submit Petitions to Participate**

Any party wishing to participate and share in the distribution of cable or satellite royalty funds for 2010 through 2012 shall submit to the Copyright Royalty Board the filing fee (US \$150), if required, an original Petition to Participate, five paper copies, and an electronic copy in Portable Document Format (PDF) that contains searchable, accessible text (not an image) on a CD or other portable memory device to only **one** of the following addresses.

**U.S. mail:** Copyright Royalty Board, PO Box 70977, Washington, DC 20024-0977; or

**Overnight service (only USPS Express Mail is acceptable):** Copyright Royalty Board, PO Box 70977, Washington, DC 20024-0977; or

**Commercial courier:** Address package to: Copyright Royalty Board, Library of Congress, James Madison Memorial Building, LM-403, 101 Independence Avenue SE, Washington, DC 20559-6000. Deliver to: Congressional Courier Acceptance Site, 2<sup>nd</sup> Street NE and D Street NE, Washington, DC; or

**Hand delivery:** Library of Congress, James Madison Memorial Building, LM-401, 101 Independence Avenue SE, Washington, DC 20559-6000.

Participants should conform filed electronic documents to the Judges' Guidelines for Electronic Documents, available online at [www.loc.gov/crb/docs/Guidelines for Electronic Documents.pdf](http://www.loc.gov/crb/docs/Guidelines_for_Electronic_Documents.pdf).

Dated: December 9, 2014.

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Suzanne M. Barnett,  
Chief Copyright Royalty Judge.

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